Communiqué

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IN THIS ISSUE:

Hit your Back Button to return to the top of this index.

Regular Columns

President's Report

Bencher's Meeting Highlights

Allan's Odds and Ends

Membership Changes

In Memoriam

Outstanding Interest on Client Accounts

Notice of Bencher Meetings

Special Features

How Bill C22 Could Ruin Your Life

Insurance Chatter

Expanded Mobility for Western Lawyers

Schemes and Scans: A Message from the Professional Liability Claims Fund

Bencher's Meeting Attendance Report

Notices to the Profession

Model Policy on Respectful Workplace Now Available

Occasional Board Room Space Available

Annual Report Now Available

PRESIDENT'S REPORT

Timothy J.P. Killeen
President

I became President on May 10, 2001. I had only been in the job a week when I made my first big mistake. The Memorandum to the Profession dealing with the insurance assessment came from Allan. I should have put my name on it instead. I would have been happy to try to take the credit for having our insurance premiums come down by $961.00 over the course of the last three years.

There have been a number of reasons why our insurance assessment and practising fees have come down so much. Our claims experience is improving. As a profession we are doing a better job for our clients with fewer instances of negligence. The Law Society staff are working hard to improve delivery of services at reduced costs. Our investment experience for the last couple of years has been very positive and even since the down turn in the market has not been bad.

The Law Society has also been working hard to improve things in a number of other areas. The Society,

together with the Bar Association, has created the Lawyers At Risk program through Blue Cross. Our hope i that lawyers who need some help with personal problems will be able to get quick, free access to professionals who will know how to help. The program is entirely confidential. The Society's view is that anything that we can do to help those lawyers who are having a difficult time is good for all of us. Too often personal problems, including dependency, have later turned into a competence problem.

The Law Society has also been very active on the issue of mobility of lawyers. On June 22nd we passed rul that will now allow most lawyers practising in Manitoba to practise in the other western provinces for up to 6 months in any one year period without being required to apply for practising status in that province. There ar some restrictions, which apply if you have disciplinary matters (so check before you do it) but generally if yo clients need your assistance in another province you will be able to act for them. The world is changing rapi and we felt it was important to keep up with changes in mobility. The rest of the country has been slower on this front. Ontario just recently passed rules required for the inter-jurisdictional practice protocol and you are now entitled to practise there on any 10 matters for a total of no more than 20 days in a one-year period. We are concerned about the difficulties presented to Manitobans who own property or businesses in northweste Ontario and we intend to actively pursue that mobility issue as well.

We have also been working hard on the education front. The western Law Societies set up an education tas force, which has done a lot of hard work to come up with a harmonized approach to legal education. Our ho is to ensure that once a lawyer is called to the Bar in Manitoba they will have the skills required to allow then to practise in other provinces as well. Our representatives, Donna Miller and Sheila Redel still have lots of work to do.

We have also been working to change the process by which complaints are dealt with. Discipline staff has instituted a system of mediation which is already reducing the number of complaints. In many cases, clients contact the Law Society about matters that do not really involve competence or professional misconduct but need some resolution. As long as they are resolved there is no real reason that lawyers should have to go through the 14 day letter process. Our goal to is focus on integrity and competence issues.

Finally, another area where we have had to do a lot of work and still have lots more to do is with residential conveyancing. Herb Peters worked very hard with his Committee to develop the new conveyancing protocol which has now been adopted across the west.

All in all, it's been an exciting few weeks.

Benchers' Meeting Highlights

New Mobility Rules Approved

Allan Fineblit, Q.C.

Chief Executive Officer

At their meeting of June 21, 2001, the Benchers of the Law Society of Manitoba approved rules that will perr lawyers licensed to practise in any western Canadian province to practise in any other western Canadian province for up to six months in any year. Similar rules are now in place in British Columbia, Alberta and Saskatchewan. (For details, see Marilyn Billinkoff's article in this issue.)

The Benchers spent most of their meeting reviewing trust accounting rules. Once that job is completed, they will have dramatically reduced the number of rules and will facilitate replacement of the annual Form D Trus Accountant's Report with a self-reporting form.

Prizes were awarded to the students with the four highest standings in third year law. **Paul Grower** won the Margaret Hypatia Crawford Award for the highest standing and **Stephen Moreau** won the prize for the third highest standing. Both attended the meeting and received their prizes. **Rashi Sengar** and **Nancy Zettler** wc the prizes for second and fourth highest standing respectively but were unable to attend the meeting.

The Benchers congratulated **Brenda Silver** and her colleagues from the other western provinces for winnin

the Best Program Award from the Association for Continuing Legal Education.

Benchers reviewed a Monitoring Report on the year end financial status of the Law Society. The Law Societ maintains four funds (insurance, reimbursement, legal studies and general) and in each fund expenditures were under budget and revenues exceeded what was anticipated, producing surpluses.

Allan's Odds and Ends

1. **Fast Lawyers** – Congrats to all the speedy lawyers who ran for a good cause in the Manitoba Marathon. I had a quick look at the results in the newspaper and spotted Harley Boles' amazing 3:08 time. Other full marathon finishers I spotted were Ron Toews, David Ramsay, Margaret McKenty and Gerry Parkinson. The fastest half marathon lawyer I spotted was the pride of Brandon, John Combs, followed closely by Joe Aiello, Reuben Potash, Ron Menec, Saul Simmonds, Michael Dow, Paul Edwards, Charles Sherbo, Allan Dueck, Ross Antymniuk, Karen Molle, Don Campbell, John Guy, Vic Bargen, Allan Stewart, George Chapman and Margaret Redmond. I noticed several legal relay teams including several from Aikins, one from Taylor McCaffrey and two from Manitoba Justice. The print in the newspaper was very small, so let me know which runners I missed.

2. According to the Consumer and Corporate Affairs Department, some lawyers still think they are automatically **notaries**. Not true. You have to apply to the Department for a notarial appointment.

3. Seventy students were called to the Bar on June 21, 2001. **Rekha Malaviya** was awarded the A. Montague Israels prize and the $3,000 that went with it. The prize goes to the student who best embodies both competence in law and other interests and achievements.

4. Congratulations to **Chief Justice Hewak** who celebrated 30 years on the Bench in May of this year.

5. I attended a dinner for **Harold Buchwald, Q.C.** on June 14, 2001 honouring his appointment as Counsel to the Pitblado Buchwald Asper firm and his acceptance of the position of Executive Director of Art Stabilization Manitoba Inc.

Model Policy on Respectful Workplace Now Available

The Benchers of the Law Society adopted an equity policy statement in 1998 that men and women fully participate in the legal profession regardless of age, disability, race, religion, marital or family status or sexu orientation.

In order to carry out this policy, the Society made a commitment to make information available to members t assist them in identifying and removing barriers to entry to and practice within the profession. The **Model Policy on Respectful Workplace** is the third policy prepared by the Equity Committee as part of this commitment.

A copy of the model policy may be obtained by calling Lana Williams at 926-2028. The policy can be viewed here on our web site or downloaded in Adobe PDF format.

Expanded Mobility for Western Lawyers

Marilyn Billinkoff
Deputy Chief Executive Officer

On June 21st the Manitoba Benchers approved new interjurisdictional practice rules which take effect immediately. The rules broaden the ability of western lawyers to practise in Manitoba, Saskatchewan, Albert and British Columbia and embody the principle accepted by the four Western Law Societies to ultimately move towards full and unfettered mobility. Manitoba lawyers will now be able to practise law in Saskatchewa Alberta and British Columbia for no more than 6 months during any 12 month period (the 6/12 rule). Lawyers from Saskatchewan, Alberta and British Columbia will be able to enjoy the same practising privileges here.

In addition to entrenching the 6/12 rule in the west, the rules also simplify the process for lawyers from other Canadian jurisdictions intending to practise in Manitoba. The basic principle, however, remains unchanged, that being that these lawyers may only practise law in Manitoba on not more than 10 legal matters and for n more than 20 days in total during any 12 month period (the 10/20/12 rule).

In many cases, a visiting Canadian lawyer will be entitled to practise law in Manitoba without a permit. A permit is not required for practise on a 10/20/12 or 6/12 basis if the visiting lawyer:

- carries professional liability insurance that is reasonably comparable in coverage and amount to that required by members of the Law Society of Manitoba and extends to the visiting lawyer's practice in Manitoba;
- has defalcation coverage that is reasonably comparable in coverage and amount to that maintained b members of the Law Society of Manitoba and extends to the visiting lawyer's practice in Manitoba;
- is not currently the subject of criminal or disciplinary proceedings in any jurisdiction;
- has no criminal record and no record of discipline in any jurisdiction; and
- is not currently subject to conditions or restrictions on his or her practice in any jurisdiction.

In Saskatchewan, a visiting lawyer must notify the Law Society of Saskatchewan in writing of his or her intention to practise in that province. Notification is not required in British Columbia, Alberta or Manitoba.

Visiting lawyers must apply for an inter-jurisdictional practice permit to practise law in Manitoba if they intenc to practise beyond the scope of 10/20/12 or 6/12 rules or if they do not meet any of the five requirements noted above.

While in-house counsel practising in Manitoba and Saskatchewan are required to be insured, this is not the case in Alberta and British Columbia. In-house counsel from Alberta and British Columbia wishing to practis in Manitoba or Saskatchewan should contact the local Law Society about the insurance requirements.

In Ontario, the Law Society of Upper Canada has recently approved rules allowing lawyers from other Canadian jurisdictions to practise in Ontario, without a permit, on a 10/20/12 basis. This replaces the requirement to obtain an occasional practice certificate in Ontario.

Participation in the 6/12 mobility rule is reciprocal. This will allow other law societies to participate in the expanded mobility provisions in the future.

If you require any additional information about inter-jurisdictional practice please contact Marilyn Billinkoff, Deputy Chief Executive Officer at the Law Society.

Membership Changes

The following members have voluntarily changed their status as indicated on the dates shown:

Inactive to Practising
May 2, 2001 Diane M. Kelly
June 1, 2001 Donald M. Hewak

Non-Practising to Practising

May 28, 2001 Melanie N. Hawkes Kavanagh

Practising to Non-Practising
May 28, 2001 D. Craig Russell
June 1, 2001 Heather L. McKennitt
June 1, 2001 Alona C. Mercado

Practising to Inactive
May 16, 2001 Ronald A. Laxer
June 20, 2001 Anita R. Wortzman

Outstanding Interest on Client Accounts

Pursuant to Section 47 of *The Law Society Act*, a lawyer is entitled to charge interest on unpaid fees, charg or disbursements where the lawyer and client have so agreed. Such interest is calculated from a date that at least one month after the date the bill is delivered to the client.

The rate of interest that may be charged shall not exceed the rate established under Section 161 of t *Income Tax Act* (Canada) on the date the bill is delivered. The interest rate effective for the period July 2001 to September 30, 2001 is 9%.

Insurance Chatter

Tana Christianson
Director of Insurance

Here's a little of what's been happening lately in the Insurance Department.

Record Numbers
In the past insurance policy year, you reported a record low number of claims. One hundred thirty-two were reported between July 1, 2000 and July 1, 2001, our lowest count since 1987. This low claims count was on of the factors contributing to our record low insurance assessment of $1,089.

Estate Claims
Gerry Arron recently asked for some statistics on insurance claims, no doubt to spice up his presentation at recent *Law at Lunch* on "Estate Administration for Support Staff". Estate administration files represent a very small percentage of the claims reported. However, the dollar value of these claims is significant. Three to fiv percent of reported claims arise out of Estate Administration, but the reserves for damages on these claims are huge. Right now, we have nine estate administration files in litigation. Our reserves on those nine files ar more than $700,000, averaging $75,000 per claim, which is a lot when you consider that the average severit of a paid claim is $25,000. As baby-boomers age and inherit the estates of their parents (a generation who knew how to save), there is real potential for an increase in these expensive claims. So, be careful!

I.T.A. Section 163.2 Policy Amendments
Our insurance policy has been amended, adding a new Section 3.7.1 which provides for reimbursement of defence costs incurred in the successful appeal of Section 163.2 penalties under the *Income Tax Act*. For information on civil penalties imposed on lawyers and accountants under these new Income Tax provisions, we recommend *Civil Penalties under the Income Tax Act*, prepared by Brian Sexton and John Prendergast and available from the Legal Studies Department of The Law Society of Manitoba. If you are charged under Section 163.2 of the *Income Tax Act*, call the Professional Liability Claims Fund. We may be able to be of assistance.

Computer Virus Exclusion
You should know that the new Policy of Insurance specifically excludes professional liability coverage for the passing on of computer viruses to clients and third parties. Computer virus coverage may be available from

your commercial insurer as part of your general office insurance package. Contact your insurance broker for information on availability.

Theft and Fraud
While you're on the phone to your insurance broker, check your Employee Theft and Fraud coverage too. Tl Law Society's Reimbursement Fund only kicks in if a lawyer in your firm steals trust funds. If money goes missing from your general account, or if an employee who is not a lawyer steals trust funds, you're not covered by the Law Society, but good coverage is available under many office insurance policies.

Money Laundering
Penalties under the new federal "Money Laundering" legislation (which comes into effect in September 2001 ARE NOT COVERED under the Professional Liability Insurance Policy. We urge everyone to educate themselves about this new and far-reaching money laundering legislation. Look for a Continuing Legal Education program coming up this fall. Also, check Ontario's mandatory insurer's website for information on how to comply with the money laundering legislation. Go to www.practicepro.ca. Also in the works is a Compliance Manual, produced jointly by the Law Societies of British Columbia and Ontario.

www.clia.ca
Speaking of websites, check out CLIA's website at www.clia.ca. Back issues of Loss Prevention Bulletins, links to other legal sites, and other useful information are all available on the site.

www.canlii.org
Are you aware of the CANLII website at www.canlii.org? CANLII, a federation of Law Societies initiative, has Court Decisions from most Canadian Provinces and Territories, Statutes of Canada, Manitoba Queen's Ben Court Decisions for 2000 and 2001, and Court of Appeal Decisions from 1996, all on-line. This site can save you a trip to the Law Courts Library and downloads are free!

"Standard" Caveats
From time to time, we debate with real estate practitioners whether they really need to order and review with their clients the seemingly standard caveats, by-laws and other orders frequently endorsed on title. We're to that the common practice is not to bother getting copies of those kinds of registrations, because they're generally:

- old (which means Land Titles needs a lot of time to find and copy them)
- lengthy (which translates into bigger costs both in LTO copying fees and in lawyers time for reviewing them)
- standard (that is to say, "*I can predict what the Agreement says just from who the Caveator was and when it was filed*") and
- inevitable (*"Municipalities and utilities have overriding rights to everyone's property, and there's not much clients can do about it"*).

If you take that approach, you do so at your peril. The Manitoba Court of Queen's Bench has affirmed this, a recently as June 21, 2001, in a judgment on a claim we had defended on behalf of one of our insured law firms. While the client couldn't prove damages flowing from the solicitor's conduct, the Court found that the lawyer was clearly in breach of his duty by not obtaining and reviewing with the purchaser two encumbrance on title, as innocuous as they seemed. One allowed for closing a government road allowance. The second was the Crown's caveat regarding its water control works. In opining to the purchaser that neither encumbrance would affect the marketability of the purchaser's property, the lawyer was making "nothing mo than a calculated guess," the Judgment indicates, since the instruments had not been investigated. The Cou had the following comments:

> *"It is true to argue that in the final analysis the encumbrances could have been removed as not affecting the title. The entitlement to remove these encumbrances in and of itself is information of importance to a purchaser. It is also true that the encumbrances did not affect the marketability of the property, but the mere failure to investigate and/or seek direction after advising of their likely effect wa in my view, a breach of duty. How would a solicitor have known with certainty the encumbrances did not affect the marketability unless the documents were reviewed?"*

Good question.

Employment and Income Assistance Lien

Thanks to Izzy Frost, of Justice Manitoba, and Anita Chambers, Supervisor at the Department of Family Services and Housing, for drawing a loss prevention issue to our attention. Properties registered in Land Titl may have *The Employment and Income Assistance Act* liens against title. What many lawyers do not appreciate is that you cannot rely on the face value of these liens. Where a portion of a recipient's income assistance goes to retiring the principal of a real property mortgage, for arrears of real property taxes or for major repairs to the building, only one initial lien registration has to be made against the title. If any subsequent assistance payments are made (and they may be made monthly over a period of years), the ne payments don't have to be separately registered. So, the total amount of those payments and the amount required to discharge the lien may be far in excess of the face amount shown on title (see Sections 20 and 2 of *The Employment and Income Assistance Act*). Apparently, many lawyers aren't ordering lien pay-out statements and as a result are doing real estate closings without knowledge of the full amount owing. Pay-o statements can be obtained by contacting Anita Chambers at the Department of Family Services and Housi at 945-3041. If you see an *Employment and Income Assistance Act* lien on the title, call so you aren't caugh short.

If you have any questions about our insurance program or policy, loss prevention ideas you'd like to share, c opinions you'd like to express, please feel free to call any of us in the Insurance Department:

Tana Christianson	926-2011	tchristianson@lawsociety.mb.ca
Kate Craton	926-2012	kcraton@lawsociety.mb.ca
Louise Ritchie	926-2021	lritchie@lawsociety.mb.ca
Bonnie Harvey	926-2026	bharvey@lawsociety.mb.ca
Heather Anderson	942-5571	handerson@lawsociety.mb.ca

How Bill C22 Could Ruin Your Life

Allan Fineblit, Q.C.
Chief Executive Officer

Parliament passed Bill C22 over the protests of the legal profession. It will likely come into effect this fall. Th Federation of Law Societies is attempting to persuade the federal government to delay its implementation ar reconsider its impact on the legal profession. Everyone agrees that money laundering is a bad thing and ma of the strong measurers taken in the Bill to prevent it are to be applauded. Many, but not all.

Among other things, Bill C22 requires lawyers to disclose suspicious transactions to an agency of the federa government. Failure to disclose can result in up to a $2 million fine and possibly a jail term. And when you disclose, you can't tell your client that you've done it.

While the Bill exempts solicitor/client privilege, it does not consider the confidential nature of the relationship Clients need to be able to confide in their lawyers and trust them. Bill C22 means that the client will never know if information they provide to their lawyer is being treated as privileged or is being disclosed. It compromises the independence of the legal profession and turns them into an agent of government against their client. Furthermore, the lawyer is put in the awful situation of having to balance their own interests (whe in doubt report, so as not to risk the heavy penalties) with the interests of their client. Elsewhere in this issue Tana Christianson notes that fines and penalties are not covered by your insurance.

The Bill puts some heavy responsibility on all lawyers. For example, each law firm (including sole practitioners) must appoint a compliance officer and have in place a formal compliance regime, including a compliance manual.

What you can do now is to prepare for proclamation. A very good place to start is the Ontario Lawyers Professional Insurance Corporation site, *www.practicepro.ca*, which tells you everything you need to know about what is expected of you. FinTRACK is the government agency that acts as the repository for informati collected about suspicious money laundering activities. Their website is accessed at *www.fintrack.gc.ca*.

The Law Society of Manitoba is developing materials for a Continuing Legal Education program tentatively scheduled for this fall.

The Federation of Law Societies is actively trying to fix this. We have obtained a legal opinion and will be considering our options when the Federation meets in August. We will keep you posted on this important issue.

Schemes and Scams

A Message from the Professional Liability Claims Fund

The Professional Liability Claims Fund is issuing a caution to all lawyers: *Be vigilant about schemes and scams*.

The Code of Professional Conduct [Chapters 3-7] cautions us that we should be on guard against becoming the tool or dupe of an unscrupulous client or of persons associated with such a client. Insurance claims involving "con artist" clients arise with alarming frequency. For a con artist, duping a lawyer adds credibility t the con. If a lawyer can be tricked into participating in a questionable scheme, that lawyer's very involvemen cloaks the scheme in respectability, and may be the reason the con artist is successful in persuading other people that the scheme is in fact legitimate.

"Lawyer jokes" notwithstanding, lawyers are seen as credible and the public often believes that a lawyer's involvement means that a transaction is legitimate and secure. Countless claimants have given evidence to that effect in lawsuits against our insured members.

How can we protect ourselves, and the Professional Liability Claims Fund, against claims arising out of involvement with rogues? Our recommendation is that, every time you act on a transaction - particularly thos involving investment schemes – you should think through these issues:

1. Do you fully understand the transaction?
2. Are you satisfied that the investment is legitimate?
3. Are you satisfied as to the identity of your client, the promoter, and any other key parties?
4. Are you satisfied that the source of funds is legitimate? (And don't forget about the Money Launderinç legislation. See Communiqué April 2001).
5. If a financial institution is involved, are you satisfied that it actually exists and is legitimate?
6. Are you actually offering legal services and advice, and doing real legal work in the transaction?
7. Are your obligations clear?

If the answer to any of these questions is "no", why are you involved?

In our province, we've seen various schemes where lawyers were retained by rogues, became their victims, and then were sued by third parties who suffered loss through the rogues' actions. Because these matters a still before the Courts, we can't give you any details. Other Canadian jurisdictions have seen scams involvin rogues passing themselves off as the owners of real property which they then convey or mortgage, and schemes involving flipping a number of properties in a neighbourhood to artificially inflate prices. Those too are currently before the Courts.

You have an obligation both to yourself and your fellow practitioners to practice defensively. Watch your bac cover your behind, and be on guard against charming rogues.

Acknowledgements to Su Forbes and Kerry Sheppard, British Columbia Lawyers Insurance Fund.

In Memoriam

Arthur Raymond Williams passed away on May 30, 2001 at the age of 80. Mr. Williams was admitted as a Solicitor and received his call to the Bar on May 27, 1950. He then moved to Toronto where he was employe with the Canadian National Railway for more than 30 years. Mr. Williams maintained a non-practising status with the Law Society until 1985 when he retired. Mr. Williams resided in Vancouver at the time of his death.

Occasional Boardroom Space Available

The Law Society has several boardrooms available for use by the profession on an occasional basis. The are available **free** of charge to members. This will be of special interest to lawyers who don't have spa available in downtown Winnipeg. To book a boardroom, call Molly Morris at 926-2018.

Bencher and Regular Committee Meeting Attendance

June 1, 2000 to May 10, 2001

Click here for an Adobe PDF file detailing Bencher attendance.

Summer Fun

Allan Fineblit, Q.C.

Chief Executive Officer

As I write this, I am recovering from yesterday's dental work, a root canal on one side and a wisdom tooth extraction on the other. I expect I'll be having soup for lunch. While working me over, my dentist announced that he is moving to Toronto. His kids live there and the birth of his first grandchild in Toronto was too much bear. He'll be gone by September. This was very bad news to me.

When friends who live elsewhere try to persuade me to move to Vancouver or Ottawa or Calgary, I have a li of reasons not to. Affordable housing, clean air and Gunns Bakery are all on the list, but at the very top is my dentist. It's taken me years to find the right dentist and for that matter, the right shoemaker and barber (why do people snicker when bald guys mention their barber?). I also have the right lawyer...actually several of them.

I often get asked by friends and relatives to refer them to a lawyer. Well actually, they ask me to do the work myself. Unlike most of you, however, I don't get stuck preparing Uncle Harry's will (you know the drill...he wants it yesterday, he wants it for free, and you have to go to his house because he's too busy to come to yours!). I have the perfect excuse. It wouldn't be right for someone like me, who gets paid big bucks by the legal profession, to compete with them for Uncle Harry's much coveted legal work.

Instead, I give Uncle Harry and all the others a list of lawyers I think are just right for them. How does one ge on this prestigious list? Three things:

1. 1. The price is right. The right lawyers for my relatives don't always charge by the hour. They charge the value of the service they are providing. None of my relatives wants to pay $5,000 in fees to resolv a $4,000 dispute.

2. The service is good. Phone calls get returned, questions get answered and generally the work gets done when it's supposed to.
3. The advice is practical and solution-oriented. As a young lawyer I came across a conflict and had to refer a good client elsewhere. I asked a senior colleague about two names I was considering. My senior colleague recommended one and not the other. I asked why and he said "one is a deal maker

and the other a deal breaker". Uncle Harry needs a deal maker.

You will notice I didn't include brilliance, a sterling advocacy, or great courtroom skills. Occasionally someon needs brilliance, but not very often. For most people, good is good enough and for my relatives at least, fair prices, prompt service and practical advice is just right.

As I spend my summer shopping for a new dentist, I'll be looking mostly for those same three qualities. By th way, referrals are welcome and if you've got a live one, I'll gladly trade you for the phone number of Gerry, n outstanding barber ($12, no waiting).

Annual Meeting

The Annual Meeting of the Law Society of Manitoba took place on June 21, 2001. The audited financ statements were approved, the auditors were re-appointed and the Annual Report was received.

The Annual Report can be found here on our website.

We no longer publish the Annual Report in paper format but if you can't access it on the web and would like copy, let us know and we'll print one off for you.

Notice of Benchers' Meeting

The next meeting of the Benchers of the Law Society of Manitoba will be held on **Friday, September 7, 20 at 2:00 p.m. at Elkhorn Resort in Clear Lake, Manitoba**. Members of the Society, and especially membe of the Western Bar Association, are encouraged to attend and participate in the deliberations of the governi body.

The following is a list of the Benchers meetings for the coming year.

September 7, 2001
October 25, 2001
December 13, 2001
January 31, 2002
March 21, 2002
May 23, 2002
June 27, 2002

COMMUNIQUÉ BACK ISSUES

December 2000
September 2000
May 2000
January 2000
October 1999
May 1999
January 1999
September 1998
May 1998